

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PETE'S BIG TVs, INC.,

Plaintiff,

V.

AG LIGHT AND SOUND INC.

Defendant(s).

Case No.: 2:24-cv-00315-APG-NJK

ORDER

[Docket No. 21]

Pending before the Court is a stipulation to extend the scheduling order by 60 days. Docket
[redacted].

A request to extend unexpired deadlines in the scheduling order is governed by Rule 16 of the Federal Rules of Civil Procedure.¹ “The Ninth Circuit is protective of this particular rule, as it deems Rule 16 to be an essential tool in controlling heavy trial court dockets.” *Williams v. James River Grp. Inc.*, 627 F. Supp. 3d 1172, 1177 n.3 (D. Nev. 2022) (quoting *Gerawan Farming, Inc. v. Rehrig Pac. Co.*, No. 1:11-cv-01273-LJO-BAM, 2013 WL 645741, at *4 (E.D. Cal. Feb. 21, 2013)). Indeed, the Ninth Circuit has “repeatedly and emphatically addressed the importance of scheduling orders as tools for district courts to manage their heavy caseloads.” *Desio v. State Farm Mut. Auto. Ins. Co.*, 339 F.R.D. 632, 641 (D. Nev. 2021) (collecting cases). As articulated in one of those cases:

A scheduling order “is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril.” The district court’s decision to honor the terms of its binding scheduling order does not simply exalt procedural technicalities over the merits of [the] case. Disregard of the order would undermine the court’s ability to control its docket, disrupt the agreed-upon course of the litigation, and reward the indolent and the cavalier.

¹ Such a request is also governed by Local Rule 26-3.

1 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992) (internal citation
 2 omitted).² Given the importance of scheduling orders and the well-established expectation that
 3 they be taken seriously, “enforcement of such an order should come as a surprise to no one.”
 4 *Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1027 (9th Cir. 2006).

5 A request to extend unexpired deadlines in the scheduling order must be premised on a
 6 showing of good cause. Fed. R. Civ. P. 16(b)(4); Local Rule 26-3. The good cause analysis turns
 7 on whether the subject deadlines cannot reasonably be met despite the exercise of diligence.
 8 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). “The diligence
 9 obligation is ongoing.” *Morgal v. Maricopa Cnty. Bd. of Supervisors*, 284 F.R.D. 452, 460 (D.
 10 Ariz. 2012). The showing of diligence is measured by the conduct displayed throughout the entire
 11 period of time already allowed. *See Muniz v. United Parcel Serv., Inc.*, 731 F.Supp.2d 961, 967
 12 (N.D. Cal. 2010) (quoting *Jackson v. Laureate, Inc.*, 186 F.R.D. 605, 607 (E.D. Cal. 1999)).
 13 “[C]arelessness is not compatible with a finding of diligence and offers no reason for a grant of
 14 relief.” *Johnson*, 975 F.2d at 609. When diligence has not been shown in support of an extension
 15 request, “the inquiry should end.” *Id.*³

16 The stipulation seeks relief on the ground that Defendant’s 30(b)(6) representative’s
 17 deposition can not be scheduled due to the representative’s preplanned vacation time. Docket No.
 18 21 at 2. The parties request time to reschedule the deposition and complete the remaining
 19 discovery efforts. *Id.* However, the stipulation fails to explain why that circumstance justifies a

20 ² The Ninth Circuit has at times taken a softer approach to extensions of deadlines outside the Rule
 21 16 context, such as those related to briefing schedules. *See Ahanchian v. Xenon Pics., Inc.*, 624
 22 F.3d 1253, 1257-60 (9th Cir. 2010); *but see Ratha v. Phatthana Seafood Co.*, 35 F.4th 1159, 1181
 23 (9th Cir. 2022) (distinguishing *Ahanchian* and affirming denial of request to extend “stringent”
 24 briefing schedule). Given the robust body of law specific to the Rule 16 context, the Court does
 25 not apply the standards discussed in these other cases. *See, e.g., Williams*, 627 F. Supp. 3d at 1177
 26 n.3 (citing *Espinosa v. Corrections Corp. of Am.*, No. 2:19-cv-01617-RFB-NJK, 2021 WL
 27 4186694, at *1 n.1 (D. Nev. Aug. 23, 2021)).

28 ³ A showing of diligence is required regardless of whether the request to modify case management
 29 deadlines is presented by stipulation. “That a request is made jointly neither mandates allowance
 30 of the extension sought nor exempts parties from making the necessary showings to justify that
 31 relief. Failure to provide such showings may result in denial of a stipulated request to extend the
 32 case management deadlines.” *Williams v. James River Grp. Inc.*, 627 F. Supp. 3d 1172, 1178 (D.
 33 Nev. 2022); *accord Lux v. Buchanan*, No. 2:23-cv-00839-MMD-NJK, Docket No. 49 (D. Nev.
 34 Nov. 1, 2023) (Du, C.J.) (affirming denial of stipulation to extend case management deadlines
 35 based on lack of diligence).

1 two-month extension of deadlines. Such an extension appears excessive on its face in relation to
 2 the circumstance identified.

3 The Court also warned counsel in its June 11, 2024, order that “they must strictly comply
 4 with the deadline to file a discovery plan, that failure to do so may not result in leniency in the
 5 case management deadlines, and, indeed, that violating the local rules in this regard may result in
 6 the imposition of sanctions.” Docket No. 19 at 2. Despite the clear local rules on the deadline for
 7 filing the discovery plan, it was only filed after the Court ordered the parties to do so. *Id.* To
 8 date, the parties have only exchanged initial disclosures and Plaintiff has served one set of written
 9 discovery. Docket No. 21 at 2. That is not a record of diligence. Furthermore, per the June 11,
 10 2024, order and parties' own stipulation in the proposed Joint Discovery Plan, the parties agreed
 11 that initial disclosures would be made on or before June 7, 2024. Docket No. 18 at 3. However,
 12 Plaintiff served its disclosures seven days late, and Defendant served its disclosure almost two
 13 months late. Docket No. 21 at 2. Plaintiff is now waiting for Defendant’s response to its first set
 14 of written discovery requests, and no reason has been provided as to why responses have not been
 15 provided. *Id.* at 3. Diligence is obviously lacking given the circumstances.

16 Even more concerning is the fact that the parties are now attesting that they will need
 17 further opportunity to take depositions of fact witnesses, and they seek the opportunity to follow-
 18 up on any perceived deficiencies in the written discovery to date. Docket No. 21 at 3-4. If these
 19 depositions and written discovery are indeed necessary, it begs the question as to why the parties
 20 are asking for an extension so close to the cutoff date when discovery has been open for months.
 21 The applicable standard is whether discovery could have been completed within the ordered
 22 timeframe had the movant been diligent during the entire discovery period. “When a party waits
 23 until the eve of the applicable deadlines to propound discovery or compel further responses to
 24 discovery, the fact that he would like to follow-up on that discovery with additional discovery is
 25 simply not grounds to reopen discovery.” *CC.Mexicano.US, LLC v. Aero II Aviation, Inc.*, 2015
 26 U.S. Dist. Lexis 169110, *11-12 (D. Nev. Dec. 15, 2015) (citations omitted).

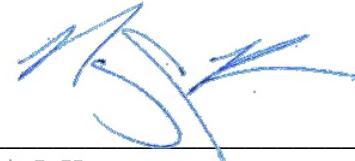
27 In short, good cause for the extension sought has not been shown. Nonetheless, as a one-
 28 time courtesy, the Court will allow a 7-day extension of the discovery cutoff date only. The Court

1 is not inclined to extend other deadlines further. All other deadlines set forth in the order at Docket
2 No. 19 continue to apply.

3 The Court finds that good cause has not been established for a two-month extension of the
4 current deadlines. Accordingly, the stipulation to extend is **GRANTED** in part and **DENIED** in
5 part. The discovery cutoff is hereby **EXTENDED** to September 11, 2024.

6 IT IS SO ORDERED.

7 Dated: August 29, 2024



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9 Nancy J. Koppe
United States Magistrate Judge

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